MF 04-4
Tax Type: Motor Fuel Use Tax
Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
	)	**Docket No. 03-ST-0000**
v.	)	**Acct # 00-00000**
	)	**NTL # 00-000000 0**
JOHN DOE/DOE BRANDS, INC.	)	
Taxpayers	)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Robert Doe, *pro se*, and Jim Doe, *pro se*, for Doe Brands, Inc.

Synopsis:

On October 17, 2003, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe and Doe Brands, Inc. ("taxpayers") for motor fuel use tax. The Department determined that Mr. Doe was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The Department determined that Doe Brands, Inc. owned the vehicle that Mr. Doe was operating. The taxpayers timely protested the NTL, and an evidentiary

hearing was held. After reviewing the record, it is recommended that the NTL be dismissed against Mr. Doe and affirmed against Doe Brands, Inc.

FINDINGS OF FACT:

1. On August 8, 2003, Mr. Doe was operating a two-axle box truck with a gross vehicle weight of 29,000 pounds in Illinois without a valid motor fuel use tax license or decals. (Dept. Ex. #1; Tr. p. 7).

2. On August 8, 2003, the title of the truck was in the name of Doe Brands, Inc. ("Doe"). (Dept. Ex. #1; Tr. p. 15)

3. On October 17, 2003, the Department issued a Notice of Tax Liability to the taxpayers for motor fuel use tax showing a penalty due of $1000 for failure to have a valid license and decals while operating the vehicle on August 8, 2003. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The Department contends that Mr. Doe was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and decals pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

> "Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates or causes to

be operated any commercial motor vehicle on any highway within Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

> "[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act provides in part as follows:

> In addition to any other penalties imposed by this Act:
>
> (a) If a commercial motor vehicle is found operating in Illinois (i) without displaying decals required by Section 13a.4 of this Act, or in lieu thereof only for the period specified on the temporary permit, a valid 30-day International Fuel Tax Agreement temporary permit, (ii) without carrying a motor fuel use tax license as required by Section 13a.4 of this Act, (iii) without carrying a single trip permit, when applicable, as provided in Section 13a.5 of this Act, or (iv) with a revoked motor fuel use tax license, the operator is guilty of a petty offense and must pay a minimum of $75. For each subsequent occurrence, the operator must pay a minimum of $150.
> When a commercial motor vehicle is found operating in Illinois with a revoked motor fuel use tax license, the vehicle shall be placed out of service and not allowed to operate in Illinois until the motor fuel use tax license is reinstated.
>
> (b) If a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displaying decals required by Section 13a.4 or without a valid single trip permit when required by Section 13a.5 of this Act or a valid 30-day International Fuel Tax Agreement temporary permit, **the person required to obtain a license or permit under Section 13a.4 or 13a.5 of this Law must pay a minimum of $1,000 as a penalty**. For each subsequent occurrence, the person must pay a minimum of $2,000 as a penalty. (emphasis added; 35 ILCS 505/13a.6).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayers contend that they were not aware of the requirement for the license and decals. Mr. Jim Doe testified that he previously was an employee of Doe, which had filed a bankruptcy petition and sold its assets to XXX Enterprises on August 5, 2003. (Tr. pp. 12, 18) Mr. Jim Doe is a stockholder of XXX Enterprises. (Tr. pp. 5, 12) The assets that XXX Enterprises purchased from Doe included the truck that Mr. Doe was driving. (Tr. p. 12) According to the taxpayers, when Doe sold the truck on August 5, 2003, it did not immediately send the title to XXX Enterprises. The title arrived on August 8, 2003 and on the next business day the title was transferred to XXX Enterprises. (Tr. p. 8) Doe is located in Ohio, and the truck had Ohio plates on it when it was stopped on August 8, 2003. (Dept. Ex. #1)

The taxpayers did not provide any documents supporting their statements concerning Doe's bankruptcy or the transfer of assets. Although they claim that Doe sold the truck on August 5, 2003, they admitted that the title was not transferred until after August 8, 2003. Mr. Doe admitted that he did not have a motor fuel use tax license or

decals on the day that he was stopped. The Act mandates that "the person required to obtain a license or permit under Section 13a.4 or 13a.5" pay a minimum of $1,000 as a penalty for the failure to obtain it. (35 ILCS 505/13a.6(b).) At the time that Mr. Doe was stopped, Doe still owned the truck and was responsible for obtaining the license or permit. There is no provision in the Act that allows the penalty to be abated based on a taxpayer's lack of knowledge of the law. The Act simply requires a taxpayer to obtain the license, and the failure to do so results in the imposition of the penalty. Because Doe did not have a valid motor fuel use tax license or a single trip permit on the day that Mr. Doe was operating the truck in Illinois, the penalty against Doe must be upheld.

The $1,000 penalty assessment against Mr. Doe, however, must be dismissed. Mr. Doe was issued a $75 citation pursuant to subsection (a) of section 13a.6 because he was the operator of the vehicle. (Dept. Ex. #1) Mr. Doe was not the owner of the truck, and therefore he is not responsible for the $1,000 penalty under subsection (b). Subsection (b) requires the penalty to be imposed only against the "person required to obtain a license or permit under Section 13a.4 or 13a.5." Doe owned the truck and was responsible for obtaining the license or permit. The Notice of Tax Liability must therefore be dismissed against Mr. Doe and affirmed against Doe.

Recommendation:

For the foregoing reasons, it is recommended that the NTL be dismissed against Mr. Doe and affirmed against Doe.

Linda Olivero
Administrative Law Judge

Enter: May 24, 2004